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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,883

Applicant(s)

DECARLO, ANDREW J.

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Acknowledgements

1. The Notice of Abandonment (paper 4) dated 11-20-2003 has been withdrawn due to the approval (paper 6) on 2-09-2004 of the Petition to Withdraw Abandonment (paper 5) dated 12-12-2003. The election (paper 7) filed 12-12-2003 has therefore been entered.

Election/Restriction

2. The restriction requirement (paper 3) dated 4-08-2003 required an election between two species, Species I, (Figures 1-7) and Species II (Figures 8-12). The Applicant stated that claims 1-3 and 5-13 "read" on elected species II. Claim 4 is therefore withdrawn from consideration as being directed toward a non-elected species. Applicant is requested to either cancel claim 4, or if applicable, make claim 4 depend from an allowable generic claim.

3. The Applicant did not state in paper 7 whether the election was made with or without traverse. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

4. An action on the merits of the elected invention, claims 1-3 and 5-13 follows.

Specification

5. The disclosure is objected to because of the following:

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A) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

1) The meaning of the word "strik" recited toward the end of page 2 is considered unclear.

B) The following inconsistencies in nomenclature were noted:

1) Page 7 recites "peripheral wall or lip 16". Page 8 recites "side wall 16".

2) Page 7 recites "elongate components 28" and "components 28". Page 8 recites "Element 28" on line 1 and also recites "lower frame component 28" and "component 28".

3) Page 12 recites both "components 28a" and "lower element 28a".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: 19a, 21a, 60a and 64a. Correction is required.

7. The drawings are objected to as reference number 10 in Figure 8 and reference number 101 in Figure 9 appear without the suffix "a".

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stem being

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pivotally connected to the bar as recited in claim 9 must be shown or the feature canceled from the claim. No new matter should be entered.

See the 112 2nd paragraph rejection of claim 9 for additional details.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

9. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Note that the drawings are considered informal, as the reference numbers are not uniform and well defined.

Claim Objections

10. Claim 8 is objected to because of the following:

A) Claim 8 includes the number "8" at the beginning of the word "connected" on line 2.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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12. Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his invention.

A) Claim 7 recites the limitation "said bar". There is insufficient antecedent basis for this limitation in the claim.

B) Claim 9 recites "...said stem is pivotally connected to a lower end thereto of said bar".

Note that the specification has defined the handle as reference number 92. Note that claim 8, upon which claim 9 depends, recites "said handle includes an elongate stem that is connected to said bar". The "elongate stem" is best understood to be reference number 30, though reference number 30 was defined as an "elongate component" in the specification. Note that claim 6, upon which claim 9 depends, recites "said support frame includes at least one elongate bar extending vertically upwardly from said base". From this, the "bar" recited in claims 6 and 8 is best understood to be reference number 28, though reference number 28 was defined as an "elongate component" in the specification. From this, it is understood that the handle includes reference numbers 92 and 30 and that the "support frame" includes reference number 28.

Due to this, it is considered unclear how the "stem" is "pivotally connected" to the "bar", as the drawing figures do not show reference numbers 28 and 30 pivotally connected. Instead, they appear "rigidly connected".

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Note also that Section 608.01 (o) and 2173.05(a) of the MPEP requires that nomenclature used in the claims be apparent from the specification, unless it is apparent from the prior art.

Note additionally that Section 608.01(g) of the MPEP also recites "The description is a dictionary for the claims and should provide clear antecedent basis for all terms used in the claims".

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-3, 5-8, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maltrap, US Patent D219,509, in view of Fricke et al, US Patent 3,023,021.

Maltrap teaches a cart for supporting a golf bag and clubs therein in a vertically upright condition (see comments below) upon an underlying surface, said cart comprising:

a carriage for accommodating the golf bag (Figure 1);

a pair of axially aligned forward wheels (Figure 1 – see also comments below)

which are axially rotatably connected to said carriage and at least one rearward wheel

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(see comments below) that is rotatably mounted to said carriage, each said wheel being rotatably engagable with the underlying surface (Figure 1);

said carriage including a base for engaging the bottom of the golf bag and a support frame extending upwardly from the base and carrying at least one upper holder spaced apart above the base for engaging a bag placed on said base such that the bag is held in a vertically upright condition (Figure 1 – see also comments below), and

a handle attached to and extending rearwardly and outwardly from said frame (Figure 1), whereby applying a generally horizontal pushing or pulling force to said handle causes said cart to move over the underlying surface on said wheels while the bag and clubs are maintained in the vertically upright condition (see comments below).

Maltrap fails to explicitly state that the rearward wheel is swivelably mounted, though the rearward wheel appears to be swivelably mounted in Figure 1.

However, it is a generally recognized principle that in a stable handle propelled vehicle such as a cart, that at least one wheel should be capable of being steered, or “swivel” in order to facilitate maneuvering. Fricke provides a teaching of a stable handle propelled vehicle with two axially aligned front wheels (47) and a rear wheel (49) that is “swivelably” mounted (lines 20 and 21 of column 2) to the vehicle. As noted, a swivelably mounted rear wheel facilitates maneuvering.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a swivelably mounted rear wheel in the cart of Maltrap, as taught by Fricke.

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Regarding the term “vertically upright”, note that page 7 of the disclosure defines “vertically upright” as: the longitudinal axis of the supported bag and clubs is substantially perpendicular, and in any event, inclined no more than 12 degrees from perpendicular, relative to the plane of the underlying surface. Note that this is consistent with the teachings of Maltrap, which shows the longitudinal axis of the supported bags and clubs are slightly, but less than 12 degrees off-vertical. Note also when the cart is utilized on an underlying surface with a slight downslope, which is commonly found on a golf course, that the golf bag and clubs will be even less off-vertical and depending upon the grade of the downslope, may achieve a “vertical orientation”.

Regarding which wheels of Maltrap are the “forward” wheels, and which is the “rearward” wheel, note that the drawing description for Figure 2 of Maltrap is described as a “front view”. Note that the “single wheel” is partially hidden from view in Figure 2, while the two axially aligned wheels are not. From this, it is obvious that the single wheel must be the “rearward wheel” since it is partially obscured from view in the “front view” of Figure 2, while the “axially aligned wheels” are not, so they must be the front wheels.

Regarding claims 2, 3, 5 and 12, see the drawing figures of Maltrap.

Regarding the recitation of “elongate bar” in claim 6, the “elongate bar” may be either the bar extending upward proximal the golf bag, or the lower section of the handle shown in Figure 2.

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Regarding claim 7, see the drawing figures of Maltrap and the 112 2nd rejection of claim 7. Note Figure 2 of Maltrap shows that the handle ("upper loop portion" is a separate part from the "elongate bar" which is connected to the handle and fastened to the base.

Regarding claim 8, note the connection point between the "vertical portion" of the handle, which may be termed an "elongate stem" and the bar is below a midpoint, as shown on Figure 2 of Maltrap.

Regarding claim 10, note that Webster's Collegiate Dictionary 10th Edition, defines "strut" as "structural piece designed to resist pressure in the direction of its length". Note that the axle, or other structure that connects the wheel to the frame will resist "pressure", or "stress" that is applied axially, as any material has a Modulus of Elasticity that allows the material to develop internal stress which resists a large, or "plastic" deformation of the material.

15. Claims 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Maltrap, US Patent D219,509 and Fricke et al, US Patent 3,023,021, as applied to claim 12, and further in view of Liao, et al, US Patent D350,426.

The combination cart of Maltrap fails to teach a removable strap to support an upper portion of a golf bag.

However, Liao teaches a removable strap (see drawing figures). A removable strap is advantageous in that the removable strap allows a golf bag to be easily installed on the cart, and after the strap is fully attached to the cart, prevents the golf bag from falling-off the cart.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a removable strap which is attached to the concave bracket of the combination cart of Maltrap, as taught by Liao.

Allowable Subject Matter

16. Claim 9 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims and without introducing new matter.

17. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Voigt, Berard, Jones, Flagg, Reichard, Bohannan and Kang – teach golf carts

19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRYAN FISCHMANN
PATENT EXAMINER